

MAR 27 2006

NOT FOR PUBLICATION

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SCOTT WAYNE HENSLEE,

Petitioner - Appellant,

v.

TERRY L. STEWART, Director;
ARIZONA ATTORNEY GENERAL;
DORA B. SCHRIRO, Director,

Respondents - Appellees.

No. 04-16747

D.C. No. CV-01-00998-SMM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Argued and Submitted March 22, 2006
San Francisco, California

Before: REINHARDT, PAEZ, and TALLMAN, Circuit Judges.

Scott Wayne Henslee petitions this Court for habeas corpus relief from his conviction for aggravated assault. He claims that his due process rights were violated because: (1) his privately-retained examining psychiatrist had a conflict of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

interest; and (2) the trial court may have used his psychiatrist's report to determine his competence to enter a guilty plea.

Because we cannot determine from the record whether Henslee exhausted his state judicial remedies as required under 28 U.S.C. § 2254(b)(1)(A) and because it is “perfectly clear that [his] claim[s] [are] not colorable,” we assess his claims on the merits. *Cassett v. Stewart*, 406 F.3d 614, 616 (9th Cir. 2005). We conclude that the district court properly denied Henslee's request for habeas corpus relief because: (1) there is no clearly established Supreme Court law establishing a due process right to a medical expert free from conflicts of interest; and (2) no prejudice from any alleged conflict of interest is shown.

AFFIRMED.